

BRAE CORPORATION

RECORDATION NO. 10844-Z Filed 1425

JUN 23 1988 - 11 00 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10844-AA Filed 1425

JUN 23 1988 - 11 00 AM

INTERSTATE COMMERCE COMMISSION

VIA HAND DELIVERY

RECORDATION NO. 10844-Y Filed 1425

JUN 23 1988 - 11 00 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10844-W Filed 1425

JUN 23 1988 - 11 00 AM

INTERSTATE COMMERCE COMMISSION

March 25, 1988

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution
Room 2215

Washington, D.C. 20423

RECORDATION NO. 10844-X Filed 1425

JUN 23 1988 - 11 00 AM

Date 6-23-88

Fee \$ 65.00

ICC Washington, D. C.

Dear Ms. Mergenovich:

INTERSTATE COMMERCE COMMISSION

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. Section 11303 are one original and four copies of the following documents:

Acknowledgment dated as of March 23, 1988 by BRAE Transportation, Inc. and Citicorp North America, Inc. (formerly Citicorp Industrial Credit, Inc.).

Assignment dated as of March 15, 1988 between BRAE Transportation, Inc. and Citicorp North America, Inc.

Lease Agreement dated as of August 1, 1988 between BRAE Transportation, Inc. and Illinois Central Gulf Railroad.

EQUIPMENT SCHEDULE A dated as of March 7, 1988 between BRAE Transportation, Inc. and Illinois Central Railroad (formerly Illinois Central Gulf Railroad), as Lessee.

For purposes of this filing, the Lease Agreement and Equipment Schedule A relate only to those 13 covered hopper railcars, AAR Mechanical Designation LO, marked as follows:

BRAX 260449
260457
260461
260471
260508
260510
260520

BRAX 260524
260525
260531
260537
260539
260541

Counterpart - Donna Lill

Ms. Agatha Mergenovich
March 25, 1988
Page Two

The names and addresses of the parties to the transactions evidenced by the documents described above are as follows:

SECURED

PARTY: Citicorp North America, Inc.
601 Midland Avenue
Rye, New York 10580

LESSOR: BRAE Transportation, Inc.
160 Spear Street, Suite 1600
San Francisco, CA 94105

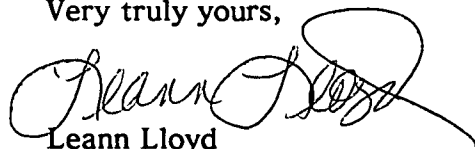
LESSEE: Illinois Central Railroad
233 North Michigan Avenue
Chicago, IL 60601

It is requested that these documents be filed and recorded under the names of the parties as set forth above. In view of the fact that they relate to the Security Agreement Chattel Mortgage and Lease Assignment dated as of September 20, 1979 between BRAE Transportation, Inc. (formerly BRAE Corporation) and Citicorp North America, Inc. (formerly Citicorp Industrial Credit, Inc.), previously recorded and assigned recordation number 10844, we request that they be assigned the next available letter designations under that primary number.

I also enclose a check in the amount of \$60.00 for the required recordation fee.

Please return: (1) your letter acknowledging the filing, (2) a receipt for the \$60.00 filing fee, (3) the enclosed copy of this letter and (4) the original and four copies of the document (retaining one for your files) all stamped with your official recordation information.

Very truly yours,


Leann Lloyd
Corporate Secretary &
Executive Legal Assistant

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

6/23/88

OFFICE OF THE SECRETARY

LeAnn Lloyd
Corporate Secty & Executive Legal Asst.
Brae Corporation
160 Spear Street
San Francisco, CA 94105

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/23/88 at 11:00AM , and assigned recordation number(s). 10844-W, 10844-X, 10844-Y, 10844-Z & 10844-AA

Sincerely yours,



Secretary

Enclosure(s)

BRAE TRANSPORTATION, INC. JUN 23 1988 11 40 AM
AGREEMENT OF RAILWAY COVERED HOPPER CARS
WITH INTERSTATE COMMERCE COMMISSION
ILLINOIS CENTRAL GULF RAILROAD

THIS AGREEMENT, made and entered into this 1st day of August, 1987, by and between BRAE TRANSPORTATION, INC., a corporation of New York, hereinafter called Car Company, and ILLINOIS CENTRAL GULF RAILROAD, a corporation of Delaware, hereinafter called Lessee,

WITNESSETH:

WHEREAS, Car Company is willing to assign thirty-seven (37) railway covered hopper cars of 100 ton and 4,650 or 4,750 cubic foot capacity, initialled and numbered per Schedule "A" attached, and Lessee is desirous of accepting assignment of said cars.

NOW, THEREFORE, in consideration of the premises and of the covenants, promises and undertakings of the parties hereof, as hereinafter contained, it is agreed as follows:

(1) Car Company and Lessee agree that the initial date for this agreement will be August 1, 1987.

(2) Subject to provisions of this lease, Lessee shall have exclusive use and control of the cars during the term of this agreement, or extension thereof, provided, however, that Lessee will use its best efforts to insure that said cars shall be used only within the Continental limits of the United States of America, or in temporary or incidental use in Canada.

(3) Lessee agrees to compensate Car Company for the usage of said cars utilizing the following compensation method:

Lessee agrees to compensate Car Company for the use of the cars, while on the lines of the Lessee, at the agreed-upon car hire rate of \$0.875 per hour, and \$0.00 per mile, not to exceed an aggregate of \$315.00 per car per month. Lessee guarantees that such cars, except for cars in service for partial months, will be on the lines of the Lessee no less than 360 hours per car per month during the term of this agreement. Partial

months, whether at the inception or conclusion of this agreement or due to a car or cars being shopped for repairs or destroyed, shall be paid at the rate of \$10.50 per car per each day of the partial month. Lessee agrees to make estimated car hire payments to Car Company, such estimate to be not less than 360 hours per car per month, during the term of this agreement, within 15 days following the end of the service month, or to BRAE Transportation, Inc., 160 Spear Street, 16th Floor, San Francisco, California 94105.

(4) Car Company shall be entitled to collect all per diem and/or mileage earned by the cars, and shall credit to the account of the Lessee such per diem and/or mileage collected up to but not exceeding the aggregate compensation collected by Car Company over each 12 month accounting period. The accounting period shall start on the first day of January each year.

(5) The Car Company shall be responsible for the cost of maintaining the cars with the exception of the following items:

(a) The Lessee shall be responsible for the payment of all costs of repairs if any of said cars are damaged due to carrying of corrosive or abrasive materials, spilling of damaging material, or the carrying of any material or performing any act which would damage a car or any part of it, including, but not limited to, damage to outlet gates caused by open flame, vibrators, sledges or other devices during loading or unloading.

(b) If Lessee requires said cars to be painted in any manner other than Car Company's standard color, Car Company may charge for the extra cost of work. Thereafter, Lessee shall be responsible for all painting maintenance during the term of this lease or any extension thereof.

Lessee agrees to cause the cars, when in need of repair or maintenance, to be delivered to the Car Company's designated shop if located on the lines of the Lessee or to the designated interchange point if located off the lines of the Lessee free of all transportation charges. Any transportation costs incurred beyond the designated interchange point will be for the sole account of the Car Company. Lessee agrees to accept the repaired cars at the same location where either placed

or delivered off-line. Any transportation charges for the return movement of cars from the designated shop to be designated interchange point with the Lessee will be for the sole account of the Car Company.

On any car requiring repair and/or maintenance, compensation shall cease five days after Car arrives at Car Company's designated shop located on Lessee's lines, or on the date such Car arrives at a designated interchange point for shops not on Lessee's line. Compensation shall resume when the car is again made available for loading by either release from a designated shop if located on the lines of the Lessee or by receipt in interchange when from a designated shop located off the lines of the Lessee.

(6) In the event any car covered by this agreement is lost due to destruction or damage beyond economical repair in judgment of Car Company, Car Company shall be compensated by the responsible party for the loss of the car in accordance with applicable Association of American Railroads Rules. Upon confirmation that any car has been lost due to destruction or damage beyond economical repair, rental charges shall be abated after the date of notification of said destruction or damage to Car Company. Car Company, at its option, may or may not replace such destroyed or damaged cars with cars of comparable size and capacity.

(7) This agreement shall become effective as of the date hereof, and unless otherwise terminated by any other provision hereof, shall continue in full force and effect until May 31, 1988. Upon the expiration or earlier termination of this Agreement with respect to a Car, Lessee agrees to return the Car to Car Company at any such reasonably convenient interchange point of Lessee as Car Company shall designate, at Lessee's sole expense, in the same or as good condition as received, ordinary wear and tear excepted, free from all charges and liens except those which may result from an act or omission of Car Company, and free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any Car is not returned to Car Company free from such accumulations or deposits, Lessee shall reimburse Car Company for any expense incurred in cleaning such Car. In the event that any Car is not redelivered to Car Company on or before the date this Agreement expires with respect to such Car, all of the obligations of Lessee under this Agreement with respect to such Car shall remain in full force and effect until such Car is redelivered to Car Company. Compensation rent for any Car loaded by Lessee after the termination date shall be \$473.00 per month.

(8) Car Company shall not be liable for any loss of, or damage to, commodities or property, or any part thereof, loaded or shipped in said assigned cars, however such loss or damage may be caused or result. Car Company shall not be liable for any loss or damage arising through injury to or death of persons or damage to any other property, however such loss or damage may be caused or result. Lessee assumes responsibility for and agrees to indemnify Car Company against, defend and save it harmless, from any such loss or damage or claim therefrom or judgments arising thereout.

(9) Car Company shall pay all property taxes properly imposed or measured by such cars on the mileage thereon, and will file all property tax reports relating thereto. Car Company shall be responsible for all sales, and/or use taxes imposed by federal, state, municipal, or other governmental authority.

(10) Lessee shall use the cars upon each railroad over which the cars shall move in accordance with then prevailing tariffs and other applicable rules and regulations to which each said railroad shall be a party; and if the operation or movement of any of the cars during the term of this agreement shall result in charges being made against the Car Company by any railroad or association, Lessee shall pay Car Company for such charges within the period described by and at the rates and under the conditions established by said then prevailing tariffs.

(11) Upon termination of this agreement in accordance with provisions hereof, or upon failure of Lessee to cure the breach of any condition or covenant herein by it within thirty (30) days after written notice thereof by Car Company to Lessee, Lessee shall deliver said assigned cars, free and clear of any and all transportation charges, to the Car Company at any on-line interchange point designated by Car Company. If Lessee shall fail or refuse to deliver said cars as aforesaid, Car Company shall have the right, without further notice or demand, and in addition to and without personal liability claims against Lessee, and without constituting a waiver or any other remedy, claim or right hereunder or at law (i) if the agreement is terminated in accordance with provisions hereof, to take possession of said cars wherever found, or (ii) either to take possession of said cars wherever found without termination of this agreement, or to terminate this agreement and to take possession of said cars wherever found, and in all cases with or without legal process, and remove them at Lessee's expense, and for such purpose only, Lessee authorizes Car Company to enter any premises occupied by Lessee upon prior notification

and with Lessee's approval which will not be unreasonably withheld. Lessee agrees to indemnify and pay to the Lessor reasonable attorney's fees and costs of repossession.

(12) This agreement and the terms, provisions and covenants herein contained shall extend to and be binding upon and shall inure to the benefit of the respective successors and assigns of the respective parties hereto. Lessee, however, shall not assign, transfer, or encumber their interest in any of the cars, or sublet any of the cars, without prior written consent of the Car Company. Notwithstanding any written consent of the Car Company, Lessee shall remain bound by all the terms, covenants and conditions of this agreement unless said written consent explicitly releases Lessee from any liabilities and obligations.

It is understood and agreed that Car Company may assign this Agreement with respect to some or all of the Cars listed on any Schedule hereto to any trust of which Car Company or one of its wholly-owned subsidiaries is a beneficiary, to any corporate joint venture of which Car Company or one of its wholly-owned subsidiaries is a stockholder or to any other owner of such Cars (each hereinafter a "Car Company-Assignee"), provided that Car Company or one of its wholly-owned subsidiaries enters into a management agreement with such Car Company-Assignee with respect to the Cars. Upon delivery of a notice of assignment to Lessee, the term "Car Company" as used herein shall mean such Car Company-Assignee, and Car Company shall be relieved of all of its obligations and liabilities under this Agreement relating to such Cars. Lessee agrees to give its consent and to acknowledge, upon receipt of notice of assignment, such assignment of this Agreement by Car Company. Car Company warrants that any Car Company-Assignee of the Cars will subject such Cars to all the terms and conditions of this Agreement.

Lessee's rights hereunder shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Car Company in connection with the acquisition of some or all of the Cars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be paid directly to such party and/or that Cars be returned to such party. Lessee also agrees to acknowledge, upon receipt, any security assignment of this Agreement by Car Company, or by any Car Company-Assignee, to any owner or secured party under any financing agreement entered into by Car Company or such Car Company-Assignee in connection with the Cars assigned hereunder. Lessee hereby agrees that any such security assignment

may be with respect to all or part of the Cars on any Schedule hereto. Any such security assignment of this Agreement by Car Company or any Car Company-Assignee to any owner or secured party shall not subject that owner or secured party to any of Car Company's or such Car Company-Assignee's obligations hereunder. Those obligations shall remain enforceable by Lessee solely against Car Company or such Car Company-Assignee, as the case may be.

So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent cars are customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations, and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Car Company or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

(13) This instrument contains the entire agreement of the parties. It may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement or any waiver, change, modification, extension or discharge is sought.

(14) A waiver of a breach of any of the conditions, covenants or terms in this agreement by any party shall not be a waiver of any subsequent breach of any such conditions, covenants or other terms.

(15) Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage paid, addressed to:

BRAE Transportation, Inc.
160 Spear Street
16th Floor
San Francisco, CA 94105

Illinois Central Gulf Railroad
233 North Michigan Avenue
Chicago, Illinois 60601

Attention: Treasurer
cc: Supervisor Car Control

or at such other addresses as Car Company or Lessee may from time to time designate by such notice in writing.

IN WITNESS WHEREOF, Car Company and Lessee respectively, each pursuant to due corporate authority, have caused these presents to be executed and their respective corporate seals to be hereonto affixed duly attested, as of the day and year first above written.

ATTEST:



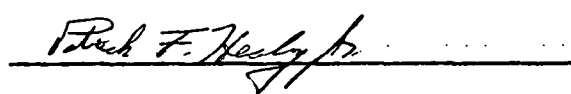
PRRAE TRANSPORTATION, INC.

By 

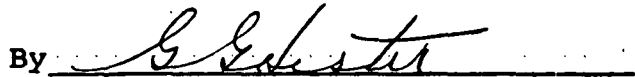
Name DONALD B. LITTLEFIELD

Title PRESIDENT - RAIL DIVISION

ATTEST:



ILLINOIS CENTRAL GULF RAILROAD

By 

Name G. G. HESTER

Title VICE PRESIDENT TRANSPORTATION